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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/691,459	10/22/2003	Ajay R. Bam	65003/P002US/10312242	7339
29053 7590 08/11/2009 FULBRIGHT & JAWORSKI L.L.P. 2200 ROSS AVENUE SUITE 2800 DALLAS, TX 75201-2784				
EXAMINER				
LE, KHANH H				
ART UNIT		PAPER NUMBER		
3688				
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08/11/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/691,459	Applicant(s) BAM ET AL.
Examiner KHANH H. LE	Art Unit 3688

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 July 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: claims 1-5, 7-14, 16-22, 26-41, 44-50, 52-63, 65-73.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

K.L.

/James W Myhre/
Primary Examiner, Art Unit 3688

Continuation of 11. Other: A quick review of the instant specification, the provisional 60/420,642 and SN.10/646579 (incorporated by reference) does not show clear support for claims 66-69 as amended thus further consideration is needed (note: the specification, page 2, erroneously lists 10/645,579 to another inventor, as incorporated by reference, and should be corrected).

Applicant's arguments with respect to the prior art have been fully considered in the last Office Action, but have not been persuasive. A prima facie case had been made thus the rejections stand.

Applicant continues to argue Examiner Myhre did not take Official Notice. Nevertheless the present Examiner is taking Official Notice (see rejection statement, Office Action, mailed May 29, 2009, (herein "last Office Action") p. 5) with e.g. Aggarwal as support thereof. Further Applicant has not cited any authorities why the present Examiner cannot continue a previous Examiner's line of argument, including Official Notices.

As stated in the last Office Action at page 29, "Applicants argue Official Notice was not taken by Examiner Myhre. It is noted statements like "it is known before invention time" are equivalents to Official Notice. It is noted several references were provided in support of such statements.

Applicants seem to repeat the argument that the smart card of Narasimhan is not a wireless device. As stated earlier and above even if such is conceded, this is a rejection under 35 U.S.C. 103 and several references had been provided in support of the Official Notice, e.g. Aggarwal (excerpted above). Applicants argue that it would not have been obvious to replace the unit including the card interface of Narasimhan with a cell phone with chip card communications port as taught by Freeman or with a portable phone as taught in Aggarwal as the last Office Action suggests at 9-10. This flies in the face of at least Aggarwal which clearly shows the interchangeability of the several mobile devices to transfer promotion-related data, including using cellphones which clearly are wireless devices. See excerpt of Aggarwal above. As to Applicant's challenge to Leapfrog, Aggarwal is clear evidence of the Examiner's assertion of the "trend in the art for everybody to go mobile and do things on cellular phones/PDAs and the likes that used to be done in wired systems." See e.g. excerpt of Aggarwal."

Applicants argue that Aggarwal fails to demonstrate that various user devices or terminals may be used interchangeably with the smart card of Narasimhan. However, as stated in the last Office Action,

"Aggarwal US 7013286 B1 in a generation, distribution, storage, redemption, validation and clearing of electronic coupons scheme (abstract), discloses at (col.10 lines 13-22):

"In another embodiment, the customer obtains electronic coupons and at a later stage, he or she downloads the electronic coupon in a portable device such as floppy disk, magnetic tape, compact disk, personal digital assistant, portable smart-card, cellular phone, etc., and takes the portable device to a retailer where the coupon verification equipment reads the electronic coupon from the portable device either using a wired communication channel or a wireless channel. The verification equipment then checks the validity of the coupon. If the coupon is valid, the retailer gives the intended discount to the customer."

Thus Aggarwal, as stated in last Office Action at p. 29, clearly shows "the interchangeability of the several mobile devices to transfer promotion-related data, including using cellphones which clearly are wireless devices." In other words, Aggarwal teaches e.g. a portable smart-card can be interchanged with a cellular phone, to be used for coupon downloading and redemption (col.10 lines 13-22). Thus it would have been obvious to replace the smart card of Narasimhan (col. 7 lines 20-32) with a wireless device such as a cellular phone, if desired, at least, since the cellular phone is an alternative among a known few, as taught by Aggarwal (col.10 lines 13-22).

It is noted also the Official Notice taken by the Examiner was that "[i]t is known at the time of invention that the following types of user devices or terminals, wired or mobile or wireless, can all be used interchangeably to receive/transfer data including incentives or coupons data". Last Office Action at 7. Contrary to argument, at least Aggarwal supports such Official Notice since "a portable device such as floppy disk, magnetic tape, compact disk, personal digital assistant, portable smart-card, cellular phone, etc." as taught by Aggarwal, can all be used to store coupons/ rebates data.

Further Freeman's "personal computer, a portable chip card reader, a point-of-sale (POS) terminal, a handheld device, a home or business telephone, a vending machine, a cellular phone, a pager, a mass transportation payment station, a television and/or television set-top box, or an automated teller machine (ATM) (abstract) and cell phones with chip card communication ports", also support the Official Notice, and Freeman's interchangeable devices can all be used to store coupons/ rebates data. Thus it would have been obvious to replace the smart card of Narasimhan (col. 7 lines 20-32) with e.g. a cell phone with chip card communication ports" if desired, at least, since this cellular phone is an alternative among a known few, as taught by Freeman.

Applicant also argues Freeman does not teach wireless communication. However Freeman's chip card can transmit and receive data wirelessly (col. 12 lines 13-15; col. 15 line 60).

Finally as to Kolls, Applicants argue that Figure 4 of Kolls is described as having mutually exclusive control means, citing alsocolumn 9, lines 37-38. Applicant argues, based on that excerpt, that Kolls does not suggest that the various control means are interchangeable as the Office Action implies. This is unpersuasive as (col. 9 lines 37-52) only discusses possible system configurations and does not detract from Kolls as support for the Official Notice as stated in the last Office Action at p. 8.